IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.3235 OF 2004

Union of India & Anr. .... Petitioners
Vs.
K.K. Upadhyay .... Respondent

Shri T.J. Pandian for the Petitioner.

CORAM: R.M.S. KHANDEPARKAR &
NARESH H. PATIL, JJ.

DATED: SEPTEMBER 01, 2006

P.C:

1. The petitioners challenge the Order dated 12-12-2003 passed in Original Application No.483 of 2003 whereby the Central Administrative Tribunal had directed the petitioners to pay to the respondent enhanced subsistence allowance at the rate of 75% with effect from 13-3-2000 till the date of dismissal and house rent allowance with effect from 1-7-2000 till the date of his dismissal within a period of two months. The challenge is on the ground that since the respondent was facing serious criminal charge regarding forgery and his suspension was on account of those criminal proceedings against him, he could not have invoked the normal rules of service to claim enhanced subsistence allowance and on the same ground the Tribunal could not have ordered the payment of such allowance. Attention is drawn to the decision of the Apex Court in **Principal, J.D. Patil**

Sangludkar and another v. Ganesh, reported in (2003) 9 SCC 164.

2. Bare perusal of the impugned Order discloses that the Tribunal referring to the provision under F.R. 53(1) has held that in terms of the said provision of law, the respondent is entitled to the enhanced rate of subsistence allowance as ordered by the Tribunal. The learned Advocate for the petitioners, while fairly conceding that the provision comprised under F.R. 53(1) entitles the respondent to claim the subsistence allowance as has been ordered, submits that in the peculiar facts of the case where the employee was involved in forgery, he should be deemed to have forfeited his right to claim such subsistence allowance and in that regard attention was drawn to para 5 of the decision of the Apex Court in the matter of **Ganesh** (supra).

3. The provision comprised under F.R. 53(1) makes no exception in the cases of the persons facing criminal prosecution during the suspension. Obviously, therefore, as the provision of law stands, no fault can be found with the order passed by the Tribunal directing the payment of subsistence allowance at the rate of 75%.

4. The Apex Court in **Ganesh's** case had held that in the

facts of the said case where the employee was charged with serious criminal offence and was facing prosecution, it was not proper for the Court to direct the payment of full salary during the period of his suspension. In the said case, the employee was charged under Sections 498-A and 302 of the Indian Penal Code on the allegation of burning his wife. Apparently, the offence was of a very serious nature. That is not the case in hand. Being so, the order of the Apex Court in Ganesh's case being clearly distinguishable on facts, cannot be made applicable to the facts of the present case.

5. Attention was also drawn to the Circulars issued by the Railway Board on 13-7-1966 and further on 11-2-1971. Apparently the rule relates to non-entitlement of the house rent allowance after expiry of 180 days of leave, when the leave continues beyond the said period. That is not the case in the matter in hand. The contention on the part of the petitioners that the same rule should be applied by way of analogy to the situation in the matter in hand, is devoid of substance. A rule which relates to a particular situation cannot be made applicable to a totally different situation. The period during which the employee is under suspension cannot be equated with the period during which the employee remains on leave.

6. As no other point is canvassed in the matter, we find no substance in the petition and the impugned order does not warrant interference in writ jurisdiction. The petition, therefore, is rejected.

(Naresh H. Patil, J.) (R.M.S. Khandeparkar, J.)

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